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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Closed Captioning and Video)
Description of Video Programming)
)
Implementation of Section 305 of the)
Telecommunications Act of 1996)
)
Video Programming Accessibility)

MM Docket 95-176

REPLY COMMENTS OF THE CALIFORNIA CHANNEL

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March 31, 1997

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REPLY COMMENTS OF THE CALIFORNIA CHANNEL

I. INTRODUCTION AND SUMMARY

The California Channel is a non-profit and educational corporation created in 1991 by private sector cable television operators and public interest foundations to provide public affairs television programming to the citizens of California. The primary purpose of The California Channel is to distribute the proceedings of the California State Legislature for cable operators to provide to their subscribers. Since 1994, The California Channel has been funded entirely by contributions from California's cable television industry as a means to provide an electronic bridge between Californians and the state's governing institutions. We provide

California's cable subscribers access to "gavel-to-gavel" proceedings of the State Assembly and State Senate, and other forums where public policy is discussed, debated, and decided - all without editing, commentary, or analysis.

In these comments, The California Channel addresses the dire implications of imposing a captioning requirement on The California Channel for its ability to maintain and expand the current level of contribution to the public interest. The California Channel, therefore, proposes that any non-profit, regional or state public affairs cable network that has the televising of state legislative proceedings as one of its functions, and is recognized by the Internal Revenue Service to be an exempt organization as described in section 501(c)(3) of the Internal Revenue Code, be exempted from captioning requirements.

The concept for The California Channel evolved from a two-year feasibility report conducted at the USC Annenberg School of Communications. That exhaustive study clearly demonstrated the lack of state legislative media coverage, and the need for such in restoring public confidence in the political process. This study served as the impetus for our creation. Currently, over 90% of The California Channel's programming hours are devoted to televising the State Legislature. The network is currently carried throughout the state on 97 cable systems, representative of 4.5 million cable subscribing homes, schools and businesses. The network employs only four full-time employees, and operates on a \$1.2 million annual budget. Over half of our annual budget goes to the purchase of satellite time and delivery of our 32.5 hours of weekly programming.

The California Channel's regular programming hours are 9:00 AM to 3:30 PM, Monday through Friday. These hours allow us to broadcast most floor sessions and committee hearings live. However, as we can only air one event at a time, we do tape all proceedings for future playback as scheduling permits. Playback typically occurs within 24-48 hours of the event transpiring. Since we are a part-time service, most cable operators place our programming on channel positions shared with other programming services. In some instances our programming is placed on PEG access channels. Current plans call for the expansion of our programming hours to 8 hours per day.

II. THE UNIQUE FORMAT AND OPERATION OF THE CALIFORNIA CHANNEL PRESENTS A FORMIDABLE CLOSED CAPTIONING CHALLENGE

The nature of The California Channel's programming presents challenges not faced by other programming service. With our commitment to live coverage of gavel-to-gavel legislative events, we enjoy very little interstitial programming or other breaks, and enter every live hearing unsure of the program's ultimate length. Virtually everything we do is totally unscripted, and would require real-time captioning services. This rapid and oftentimes lengthy verbal exchange of testimony, information and questions without any interruption whatsoever would prove a daunting task for even the best of stenocaptioners. It is common for some hearings or floor sessions, particularly those focusing on the state budget, to run upwards of nine to fourteen hours at a time without benefit of any break.

Although for four months each year, when the Legislature is not sitting in formal session,

roughly half of our programming comes from taped proceedings of legislative or regulatory events, such programming generally airs within hours or days of the event's production. This affords very little time for any provision of captioning other than that done in real time as a program is broadcast. Typically these taped events will only air once. This will seriously minimize our ability to recapture captioning costs through frequent replaying of programming. Additionally, the unpredictable nature of live legislative programming forces us daily to make programming decisions "on the fly." Legislative hearings are frequently delayed or canceled, and unscheduled events are commonplace. All these factors further compound and complicate the challenges to real time captioning.

The California Channel receives most televised legislative proceedings directly from the Legislature itself. However, since neither legislative body provides their televised coverage with captioning, the responsibility for captioning would fall to The California Channel. Even under the most favorable of rates listed by the FCC for real time captioning (\$120/hr), the expense for captioning our almost seven hours of daily programming would consume 20% of our annual budget. Given the implementation of closed captioning across the board for all programming, and the marketplace competition for captioning services, the price ultimately paid will more likely be much higher, and thus consuming even more of our contributions-based budget. At a more realistic \$300/hour, the cost for real time captioning of a seven hour broadcast day would ultimately result in an annual \$546,000 expense, approximating our annual satellite delivery costs, or almost one-half of our budget.

To even contemplate implementation of closed captioning of our statewide service, we would be forced to ask cable operators for more money at the same time they are certain to see other programming services raising their rates to cover their increased expenses. To cover only the most likely captioning rate, we would be forced to ask cable operators to contribute at more than 50% above the current suggested contribution level. That would then only allow us to maintain the current programming schedule, and forego extended coverage plans.

The California Channel is a non-profit organization without the means to generate additional revenue outside of its current contributors for covering the additional expense that captioning would create. We do not provide advertising on our network. Our sole means of support comes from the voluntary contributions that California's cable television operators provide, all without benefit of any signed agreement.

Since our inception, we have been a part-time service in a growth mode, fearful of any increase in satellite rates or other expenses that could potentially force us to shut our doors. Despite the civic mission of The California Channel, any action that would limit coverage or stifle growth of this worthwhile endeavor could be the beginning of the end of our service.

We are aware that we have limited viewership and audience appeal. We daily strive to present a video product that will have the broadest public appeal, but the reality is that we serve a highly specialized niche. Despite the higher priority for captioning the Commission places on public affairs programming, it is the very nature of that programming and its

limited audience appeal that makes captioning more challenging and less feasible than for any other type of programming service.

III. THE COMMISSION SHOULD ADOPT AN EXEMPTION FOR ANY REGIONAL, STATE OR LOCAL CABLE PUBLIC AFFAIRS PROGRAMMING SERVICE RECOGNIZED AS A NON-PROFIT ORGANIZATION BY THE INTERNAL REVENUE SERVICE THAT CARRIES STATE LEGISLATIVE PROCEEDINGS

In August of 1989, The California Channel was granted exempt status by the Internal Revenue Service. This status recognized the public service mission of the network to educate Californians on critical governmental and policy issues confronting the state. With that recognition come certain revenue limitations that might otherwise provide a means by which our network could offset increased expenses. Our network produces no advertising revenues and actually costs operators channel space in addition to their monthly voluntary contributions. Thus our only real option for covering expansion of our operating expenses is to increase the suggested contribution rate for cable television operators. Every additional dollar we request only forces us into an ever-increasing and extreme support/carriage vulnerability with cable operators.

Requiring the closed captioning of our non-profit public affairs programming would result in either severe curtailment or closure of our service. We therefore ask the Commission to grant an exemption from closed captioning requirements for any regional, state, or local public affairs programming service carrying the state legislative proceedings as one of its functions that is recognized by the Internal Revenue Service as an exempt, non-profit

organization as described in section 501(c)(3) of the Internal Revenue Code.

**IV. THE COMMISSION NEEDS TO CAREFULLY EXPLORE THE
RAMIFICATIONS OF DETERMINING RESPONSIBILITY FOR CAPTIONING**

In initial discussions with several cable operators, it is clear to The California Channel that any captioning obligations ultimately will fall to the programming providers, even if the FCC places the legal responsibility on the cable operators. Just who then becomes the "programming provider" is left ambiguous.

In addition to the distribution agreement established with the State Legislature, The California Channel currently has special distribution arrangements with various cable access groups and some public broadcasting entities for special programming that they produce. We do not purchase any programming, nor do we provide funding to these entities. These groups operate with even smaller operating budgets than do we, often creating their programming at minimal expense. Their operations could not begin to tolerate any additional expense, especially those for closed captioning. Yet, from our perspective these groups are truly the "programming providers." Given their inability to cover those expenses, the onus for captioning would most likely fall to The California Channel.

From the cable operator's viewpoint, it is easy to justify the argument that The California Channel is the "programming provider." We could rightfully argue to the cable operator that we are nothing more than a distributor of this non-captioned programming, but would they face operator refusal to carry programming violative of captioning obligations. Hence,

non-profit public affairs programming services such as ourselves that produce little of their own programming, and merely serve as distribution mechanisms for small public affairs independent productions, could become caught in a classic Catch 22 situation. The ultimate effect of course could become the silencing of both the independent non-profit productions and the distributors of public affairs programming such as The California Channel.

V. CONCLUSION

For those niche programming services like ourselves that experienced significant carriage setbacks and direct displacement from the "Must-Carry" requirements, these new captioning proposals portend a new tier of peril by their unintended elimination of programming diversity in favor of well-financed and revenue-enhancing programming services. While programming diversity is growing, careful attention must be given to preserve the fragile evolutionary framework that cultivates niche public affairs programming services. Given the non-profit educational status, limited staffing and audience potential, and the altruistic mission of our network, we would respectfully request that serious consideration be given to the protection of services like ours through an exemption from the closed captioning requirements.

Respectfully submitted,

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